

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.09.2018

Delivered on : 04.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1348 of 2018

Chandru

S/o.Chakkaravarthy

... Appellant/Petitioner

Vs

1. M/s.Multi Speciality Lab Services Pvt. Ltd.,
No.C-127, 5th Cross,
Thillai Nagar,
Trichy.

2. United India Insurance Company Ltd.,
No.13A, SBI Complex,
Netaji Road,
Manjakuppam,
Cuddalore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 07.09.2014 passed in M.C.O.P.No.489 of 2016 by the Motor Accidents Claims Tribunal (Special Sub Court-I), Villupuram.

For Appellant : Mr.Mahendran

For Respondents : Mr.J.Chandran
for 2nd respondent

JUDGMENT

Aggrieved by the findings of contributory negligence and also challenging the quantum, the appellant has preferred the present Civil Miscellaneous Appeal.

2. The appellant has filed the claim petition claiming compensation of Rs.10 lakhs for the injuries sustained by him in the accident alleging that on 21.09.2014 at about 5.15 P.M., he was driving the two wheeler bearing registration No.PY-01 AJ 3098 at the extreme left side of Villupuram-Puducherry road and while he was nearing Savitha Theatre, Villupuram, a tempo

traveller bearing registration No.TN-45 AA 9924 driven by its driver in a rash and negligent manner dashed against the appellant. Due to the impact, the appellant sustained grievous injuries. Immediately after the accident, he was admitted in Government Medical College & Hospital, Mundiampakkam, where from he was taken to JIPMER Hospital, Puducherry and admitted as inpatient and discharged on 22.9.2014. Thereafter, he was admitted in KOTI Ortho (Private) Hospital, Villupuram as inpatient from 22.9.2014 to 04.10.2014, where he underwent surgery on 23.09.2014. Regarding the accident, a criminal case in Crime No.293 of 2014 was registered by Villupuram Town Police Station. At the time of accident, the appellant was aged 30 years and was earning Rs.30,000/- per month by doing driver work.

3. The second respondent insurance company filed the counter stating that the accident occurred only due to the sole negligence of the appellant, who was riding the two wheeler on a public road without valid driving licence. Therefore, it is false to allege that the driver of the tempo traveller was alone responsible for the accident. Denying the avocation and monthly income of the appellant, the second respondent stated that the appellant has to prove that he was suffering from permanent disability and that the total claim made by the appellant is highly exorbitant and prayed for dismissal of the claim petition.

4. Before the Tribunal, the appellant examined himself as P.W.1 and marked Exs.P1 to P21. On the side of the second respondent, Dr.Muthaiyan was examined as R.W.1 and the disability certificate issued by the Medical Board was marked as Ex.C1.

5. Finding that since the appellant was not holding valid driving licence to drive the two wheeler and at the time of accident, he was under the influence of alcohol, the Tribunal arrived at a conclusion that the accident occurred due to the negligence of the driver of the first respondent as well as the appellant and fixed the contributory negligence equally. Taking the disability at 23.3% and adopting Rs.3,000/- per percentage of disability, the Tribunal awarded total compensation of Rs.2,19,850/-. Since the appellant contributed the accident, the Tribunal directed the second respondent insurance company to pay Rs.1,09,925/-. Aggrieved by the same, the appellant has preferred this appeal.

6.I heard Mr.Mahendran, learned counsel for the appellant and Mr.J.Chandran, learned counsel for the 2nd respondent and perused the entire materials available on record.

7. Assailing the findings of the Tribunal that the appellant also contributed the accident, the learned counsel for the appellant submitted that the Tribunal wrongly held that there is negligence on the part of the appellant on the ground that the appellant was in drunken state and caused the accident. He would submit that the Tribunal has fixed the contributory negligence without any documentary evidence or medical evidence. The learned counsel further submitted that the Tribunal failed to note that the second respondent has not examined the driver of the first respondent, nor any eye-witness for proving contributory negligence on the part of the appellant and that the Tribunal arbitrarily fixed 50% contributory negligence, which is against law.

8. On the other hand, the learned counsel for the second respondent contended that the Tribunal had found that in the Accident Register itself, the Doctor who treated the appellant at the time of accident, noted alcohol smell. Further, the learned counsel submitted that at the time of accident, the appellant was not holding valid driving licence to drive the two wheeler. Therefore, the Tribunal was right in fixing 50% contributory negligence on the part of the appellant.

9. The grievance of the appellant is that he was holding LMV (Light Motor Vehicle) licence, which is heavy and therefore, he can drive the two wheeler on the strength of LMV. To prove that the appellant was holding LMV licence, he had marked Ex.P12-driving licence.

10. On a perusal of Ex.P12-driving licence, it is seen that the Regional Transport Authority had issued the driving licence to the appellant to drive LMV throughout India and it does not contain authorization to drive the motorcycle with gear and/or without gear. In the present case, at the time of accident, the appellant drove Bajaj Pulsar, which is a gear motorcycle.

11. The Tribunal, held that since the petitioner was not holding valid driving licence to drive the two wheeler and on the strength of a licence to drive LMV, the appellant could not drive a two-wheeler, the Tribunal held that the appellant was not holding valid driving licence at the time of accident.

12. The learned counsel for the second respondent submitted that appellant was having the driving licence to drive LMV, which does not include the motorcycle. Therefore, the Tribunal was right in holding contributory negligence.

13. Section 10 of the Motor Vehicles Act, 1988 lays down the classes of the driving licence issued by the Licensing Authority, which is extracted hereunder:-

"10. Form and contents of licences to drive.

(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- (e) transport vehicle;
- (i) road-roller;
- (j) motor vehicle of a specified description."

14. A person must possess a driving licence in respect of the class of vehicle which he wants to drive. From a bare reading of Section 10 of the Act, it is clear that licence for a motorcycle is for a separate class of vehicle than for an LMV. A person possessing a licence for LMV or even for a transport vehicle may not be competent to drive a two wheeler. On the strength of a licence to drive LMV, a person cannot be said to possess a valid licence to drive a two-wheeler. Therefore, the Tribunal was right in holding that at the time of accident, the appellant was not in possession of valid driving licence to drive a two wheeler.

15. The another reason for fixing the contributory negligence is that at the time of accident, the appellant was under the influence of alcohol. In its counter, the second respondent has not stated anything about the consumption of alcohol by the appellant at the time of accident. Nobody was examined by the second respondent insurance company to prove that at the time of accident the appellant was in a drunken mood. However, the Tribunal has given its finding that there was traces of alcohol in the breath of the appellant which has been recorded by the Doctor in Ex.P12-Accident Register. Admittedly, the second respondent has not examined the Doctor, who issued Ex.P12-Accident Register.

16. When the second respondent itself has not raised the issue of drunkenness of the appellant, the Tribunal alone has raised the said issue without any documentary or medical evidence. Thus, the alleged traces of alcohol in the breath of the appellant is without any materials.

17. It is settled that mere smelling of alcohol from the mouth, dilation of pupils and incoherence in speech are not enough and cannot be said to conclusively prove drunkenness. Unless urine or blood test is carried, it cannot be conclusively established that the driver of the vehicle was under the influence of alcohol.

18. It is also settled that mere smell of alcohol or consumption of alcohol should not be taken as contributory negligence on the part of a claimant. The respondent should prove the drunken state of the claimant which leads to nexus with accident.

19. Mere report of Accident Register (Ex.P12) is not a substantial evidence for contributory negligence. In the present case, immediately, after the accident, the appellant was admitted in Government Hospital, Villupuram. If really the appellant was under the influence of alcohol at the time of accident, the Doctor who treated the appellant immediately after the accident would have conducted the required test. It is the duty of the Government Hospital Authority to conduct alcohol test and file a report before the Court furnishing whether the claimant has consumed alcohol or not. Therefore, in the absence of any concrete evidence, the Tribunal ought not to have held that at the time of accident, the appellant was in intoxicated mood and therefore, he was contributed to the accident.

20. As stated supra, at the time of accident, the appellant was not holding valid driving licence to drive the motorcycle. Therefore, the Tribunal was right in fixing contributory negligence on the part of the appellant insofar as possessing LMV licence only.

21. In the case on hand, the Tribunal held that the criminal case was registered against the driver of the first respondent. Registration of a criminal case against the driver of the first respondent's tempo traveller is enough to record the finding that the driver of the offending vehicle is responsible for causing the accident. From the oral and documentary evidence adduced, it is seen that there is negligence on the part of the driver of the first respondent. The only negligence attributed to the appellant is that he is not holding a valid driving licence to drive the two wheeler at the time of accident. Considering the facts and circumstances of the case and also the extent of negligence on the part of the driver of the first respondent, this Court is of the view that it would be appropriate to fix 20% contributory negligence on the part of the appellant qua not possessing valid driving licence as against 50% contributory negligence fixed by the Tribunal.

22. As far as quantum of compensation is concerned, the learned counsel for the appellant contended that due to the disability suffered by the appellant, his future has spoiled and his loss of earning capacity is also affected and that the Tribunal failed to award any amount for loss of earning capacity.

23. In the accident, the appellant had sustained fracture in right humerus, laceration in right ear, crush injury in right middle finger; deep injury in right wrist and palm. Immediately after the accident, the appellant was admitted in Government Medical College and Hospital, Mundiampakkam, Villupuram where from he was taken to JIPMER Hospital, Puducherry and had taken treatment as inpatient from 21.09.2014 to 22.09.2014. After discharging from JIPMER Hospital, he was admitted in KOTI Ortho Private Hospital, Villupuram where he had taken treatment as inpatient from 22.09.2014 to 04.10.2014.

24. In the case on hand, the appellant was referred to the Medical Board where he was examined by a team of Doctors and assessed the permanent disability at 23.3%. The opinion/disability certificate issued by the Medical Board has been marked as Ex.C1.

25. Though the appellant contended that he had sustained permanent disability and he was not in a position to do his normal avocation and therefore, this is a fit case to adopt multiplier method to calculate the loss of dependency, nothing has been produced to substantiate his contention. On the other hand, the Tribunal, taking note of the disability suffered by the appellant and following the decision of this Court in National Insurance Company Limited v. G.Ramesh and another, reported in 2013 (2) TN MAC 583, awarded Rs.69,900/- by adopting Rs.3,000/- per percentage of disability. Considering the percentage of disability assessed by the Medical Board, this is not a fit case to adopt multiplier method. Therefore, a sum of Rs.69,900/- awarded by the Tribunal towards permanent disability is reasonable and the same is maintained.

26. The Tribunal awarded Rs.25,000/- towards pain and suffering. Admittedly, the petitioner had taken treatment as inpatient for nearly 14 days at various hospitals. Due to injuries sustained by the appellant in the accident, he would have suffered pain and suffering during the period of treatment. Further, he would have suffered mental and physical shock at the

time of accident. The pain and suffering are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. Having regard to the period of treatment undergone by the appellant and considering the nature of injuries, Rs.25,000/- awarded by the Tribunal is enhanced to Rs.40,000/-.

27. The Tribunal awarded Rs.36,000/- towards loss of income during treatment period by taking the monthly income of the appellant at Rs.6,000/-. According to the appellant, at the time of accident, he was working as driver in ABT Maruti Limited, Villupuram. To prove his avocation, the certificate issued by ABT Maruti Limited, Villupuram has been marked as Ex.P14. Moreover, the petitioner has produced Ex.P16-identity card issued by ABT Maruti Limited. Thus, it is clear that at the time of accident, the appellant was working as driver in ABT Maruti Limited, Villupuram. However, the appellant has failed to produce a piece of paper to show that he was earning Rs.30,000/- per month as claimed in the claim petition. In the absence of proof, the Tribunal had taken the monthly income of the appellant at Rs.6,000/-, which in my considered view is very low.

28. Normally a person working as driver would have earned more. In the case on hand, the accident is of the year 2014 and during 2015, a person working as driver would have earned atleast Rs.8,000/- per month, leave alone daily batta. In the case on hand, as stated supra, there was no quarrel about the avocation of the appellant. Therefore, it would be appropriate to take the monthly income of the appellant at Rs.8,000/-. As rightly held by the Tribunal, due to injuries sustained in the accident, the appellant would have taken treatment for atleast six months. Therefore, it would be appropriate to award a sum of Rs.48,000/- towards loss of income for a period of six months, as against Rs.36,000/- awarded by the Tribunal.

29. The Tribunal awarded Rs.2,000/- towards extra-nourishment. Considering the nature of injuries and the period of treatment undergone by the appellant, a sum of Rs.2,000/- awarded by the Tribunal towards extra-nourishment is enhanced to Rs.10,000/-.

30. The Tribunal awarded Rs.1,000/- towards damages to cloths and Rs.5,000/- towards transport charges. Since the said sums awarded by the Tribunal are reasonable, the same are maintained.

31. The Tribunal awarded Rs.45,912/- for medical expenses. Ex.P15 is the medical bills. Since Rs.45,912/- awarded by the Tribunal is based on Ex.P15 and also nothing has been produced

by the second respondent to disprove the said bills, the Tribunal was right in awarding Rs.45,912/- towards medical expenses and this Court affirmed the same.

32. The Tribunal awarded Rs.30,000/- towards future medical expenses. Admittedly, in the accident, the appellant had sustained fracture and other injuries and during the period of treatment, he underwent surgery. Considering the nature of injuries sustained by the appellant and also the duration in which the appellant required to take treatment, a sum of Rs.30,000/- awarded by the Tribunal towards future medical expenses appears to be reasonable and the same is maintained.

33. The Tribunal awarded Rs.5,000/- towards attender charges. Considering the period of treatment undergone by the appellant, Rs.5,000/- awarded by the Tribunal for attender charges is maintained.

34. In view of the above discussion, the compensation of Rs.1,09,925/- awarded by the Tribunal is modified as under:

Heads	Rs.
Disability	69,900.00
Pain and suffering	40,000.00
Loss of income	48,000.00
Extra-nourishment	10,000.00
Damages to cloths	1,000.00
Transport charges	5,000.00
Medical expenses	45,912.00
Future medical expenses	30,000.00
Attender charges	5,000.00
Total	2,54,812.00
Rounded off	2,54,850.00

35. Since the contributory negligence of the appellant was fixed at 20%, deducting 20% of the amount i.e., Rs.50,970/- from Rs.2,54,850/- towards contributory negligence, the appellant is entitled to total compensation of Rs.2,03,880/-, rounded off to Rs.2,04,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

36. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.1,09,925/- awarded by the Tribunal is enhanced to Rs.2,04,000/- payable with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit. The second respondent insurance company is directed to deposit the modified amount along with interest within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire amount along with accrued interest on filing proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Special Sub Judge,
The Motor Accidents Claims Tribunal,
Special Sub Court-I,
Villupuram.
2. The Section Officer,
V.R.Section,
High Court, Madras.(2 copies)

Civil Miscellaneous Appeal No.1348 of 2018

BR(CO)
SSM(22/05/2019).

सत्यमेव जयते

WEB COPY